

REMARKS

Claims 16 to 30 are pending in the present application.

Claims 16 to 24 and 28-30 are rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent Application No. 2004/0041997A1 (“Uomori”). For at least the following reasons, this rejection of pending claims 16 to 24 and 28-30 should be withdrawn.

To anticipate a claim under § 102(e), a single prior art reference must identically disclose each and every claim element. See Lindeman Maschinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Additionally, not only must each of the claim limitations be identically disclosed, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the inventions of the rejected claims, as discussed above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)).

Claim 16 recites, in relevant part, “means for receiving light beams reflected by objects; and means for evaluating the received light beams according to direction and transmit time in the sense of a three-dimensional imaging of the objects.” In support of the rejection, the Examiner cites the abstract of Uomori as anticipating these claimed features of the present application. The abstract of the Uomori reference, however, does not specify any manner in which any received light beams are evaluated. In fact, the abstract of the Uomori reference does not refer to any receiving means. The abstract merely discloses projection of a light pattern on a subject. The cited abstract of Uomori, therefore, clearly does not teach a means for receiving light beams reflected by objects, let alone any means for evaluating the received light beams.

Furthermore, nothing in the actual disclosure of Uomori suggests any means for evaluating the received light beams according to direction and transmit time in the sense of a three-dimensional imaging of the objects. Specifically, any evaluation of received light beams that may

be disclosed by Uomori is based on brightness or light intensity ratios, not on transmit time. Therefore, Uomori does not anticipate claim 16. For at least these reasons, Applicants respectfully submit that claim 16, as well as dependent claims 17 to 24 and 28 to 30, are patentable over Uomori.

Independent of the above, claim 17 is further patentable over Uomori for the following reasons. Claim 17 (dependent on claim 16) recites that the light sources are at different distances from each other, which feature is shown in Fig. 1 (the light sources on the left side of the figure are separated from neighboring light sources by greater distances than those on the right side of the figure). Although the Examiner cites Figures 2A, 2B and 2C of Uomori as teachings this claimed feature of the present application, Figures 2A, 2B and 2C of Uomori show light-emitting diodes that are situated at uniform distances from each other. Therefore, Uomori does not anticipate claim 17 for this additional reason.

Independent of the above, claim 19 is further patentable over Uomori for the following reasons. Claim 19 (dependent on claim 16) recites that the light sources are mounted as individual components on a printed circuit board. Although the Examiner cites paragraph [0067] of Uomori as teaching this claimed feature, the cited paragraph of Uomori does not contain any disclosure regarding mounting light sources as individual components on a printed circuit board. Therefore, Uomori does not anticipate claim 19 for this additional reason.

Claims 25 to 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable and obvious over Uomori. For at least the following reasons, this rejection of pending claims 25 to 27 should be withdrawn.

In order for a claim to be rejected for obviousness under 35 U.S.C. § 103(a), the prior art must teach or suggest each element of the claim. See Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296 (1990); In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990). To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. M.P.E.P. §2143. In addition, as clearly indicated by the Supreme Court, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. See KSR Int’l Co. v. Teleflex,

Inc., 127 S. Ct. 1727 (2007). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the obviousness rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claims 25 to 27 depend from claim 16, and therefore include all of the features of claim 16. As noted above, Uomori clearly fails to anticipate independent claim 16. In addition, the Office Action's contentions regarding claims 25 to 27 clearly do not remedy the deficiencies of Uomori as applied against independent claim 16. Therefore, without passing judgment on the substantive merits of the Office Action's contentions regarding the additional features of dependent claims 25 to 27, Uomori clearly cannot render dependent claims 25 to 27 obvious.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that all pending claims of the present application are in allowable condition. Prompt reconsideration and allowance of the application are respectfully requested.

Respectfully Submitted,
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